AN COIMISIÚN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

04TACD2024

Between

[redacted] **Appellant**

and

REVENUE COMMISSIONERS

Respondent

Determination

Introduction

1. This is an appeal to the Tax Appeals Commission ("the Commission") of an assessment of 3 March 2022 of the Revenue Commissioners ("the Respondent"), whereby the Appellant was assessed as having a charge to capital acquisitions tax ("CAT") in the amount of €65,835. The charge comprises, firstly, CAT of €49,500 on a gift of €165,000 received by the Appellant from his parents in 2021 and, secondly, CAT of €16,335 on the further gift by his parents of €49,500 so as to pay the initial CAT liability assessed.

2. CAT of €49,500 on the 2021 gift of €165,000 was assessed in circumstances where the Appellant had previously received three payments, which the Respondent deemed were gifts from his parents. The consequence of it deeming these prior payments to be gifts from this source was that there remained €15,000 of the CAT-free threshold relating to gifts made by "Group A" disponers (among which are included parents) to allocate to the 2021 gift.

3. The three prior payments deemed to be parental gifts were (a) the transfer of €170,000 from the joint bank account of the Appellant's parents to the Appellant's personal account in 2017; (b) the sum of €19,245.78 derived from cashed Post Office savings certificates

lodged to the Appellant's personal bank account in 2018; and (c) the transfer of €142,000 from the joint bank account of the Appellant's parents to the personal bank account of the Appellant in 2020.

4. For reasons explained in the subsequent part of this Determination, the Appellant contended that the sum transferred to him in 2017 and the sum lodged in 2018 each constituted the aggregate of small gifts that he received from various persons over many years, which were exempted from CAT by legislation and thus did not reduce his Group A threshold allowance. As a consequence, the whole of the €165,000 received as a gift from his parents in 2021 fell within the CAT-free Group A threshold, with the effect that his liability should be assessed at nil. These factual and legal contentions were disputed by the Respondent and it is those payments which fall to be determined in this appeal.

5. It important to note at this point that the only argument made in this appeal by the Appellant was that the sums received by the Appellant in 2017 and 2018 were exempt from CAT because they each constituted the aggregate of many small gifts. It was not disputed that if the sums received by the Appellant were correctly deemed by the Respondent to be single gifts made by his parents, only €15,000 of the 2021 gift fell within the Group A CAT-free threshold.

6. The appeal proceeded by way of oral hearing. The Commissioner heard evidence from the father of the Appellant, who also represented the Appellant at the appeal hearing, and had the benefit of written and oral submissions made by both parties.

Background

7. On or about 3 July 2018, the Appellant filed a Form 11 return in which he declared that in 2017 he had received the sum of €170,000 ("the 2017 payment"). The Appellant was [redacted] years of age at the time he received the gift from his parents.

8. The Appellant's father supplied a written document along with the Form 11 return, wherein he explained that the 2017 payment was comprised of annual small gifts that he, his wife and the Appellant's two deceased great aunts previously had made to Appellant. Every such gift, the first of which it was said was made in 1992, was equal to the maximum amount then falling within small gift exemption. In respect of the Appellant's parents, the annual gifts were made up to and including 2017. In respect of the Appellant's great aunts the annual gifts were made up to their respective deaths in 2003 and 2010.

9. The written statement also indicated that a further sum lodged to the Appellant's personal bank account in 2018, which at the appeal hearing was specified to be in the amount of €19,245, was derived from further small gifts given to him by unidentified persons

throughout his childhood to mark notable events such as his communion, confirmation, birthdays and sporting achievements. The sum of these small gifts, estimated to be €12,000 - €13,000 was, it was said, put into Post Office savings certificates at a time which was not specified. The certificates were then cashed in 2018 in the aforementioned amount and lodged to the Appellant's account.

10. At the hearing of the appeal the Appellant's father gave oral evidence in relation to the aforementioned small gifts said to have been received by the Appellant. In this regard he began with those alleged to have been made by himself and his wife.

The "earmarked funds"

11. Firstly, the Appellant's father stated that €105,000 of the 2017 payment constituted annual gifts that he and his wife had each made to the Appellant since his birth in January 1992. Each annual payment made by them was the maximum sum then falling within the small gift exemption (£500 in 1992, rising to €3,000 by the time the payments ceased in 2017). These payments were not made by the transfer of money to a separate account in the name of the Appellant, as one might expect. Rather, the Appellant's father stated in evidence that he and his wife "earmarked" money in their joint account for the benefit of the Appellant. This was, he said, "[…] *kept for him by me with our own money in our joint account."*[1] The Appellant's father gave evidence as to how in 2017 he established the full extent of the funds accumulated by the Appellant in this manner. It was, he said:-

> "*A very simple process* […] *when I was working it out, all I simply did was I went back to 1992 and I could see that I was able to give him 500. My wife was able to give him 500. At a later stage, I think it went up to 750 or 1,000. It was very easy to do a pen and paper exercise. So that is how I arrived at the €105,000, over* […] *the course of his lifetime from 1992 to 2017."*[2]

12. Later, in answer to questions put to him in cross-examination by counsel for the Respondent, the Appellant's father stated:-

> "[…] *in the January of each year I* […] *ascertained how much I could give him in relation to the small gift exemption payment. And as his guardian I basically earmarked that in my accounts as something that I would hold and retain for him. There was no question of me doing it any other way as it was done from the year of his birth.*

13. Asked specifically about what the exercise of "earmarking*"* entailed, he said:-

[1] Transcript, page 8
[2] Transcript, page 8.

"*Every year* […] *when it was 500 I would say, that is 500 for* [my wife] *and myself. That is €1,000 for 1992, 1993, whatever it was. Then, when it went up to 3,000, that 6,000 from* [redacted] *and myself. And I would earmark that as his guardian and say this is money that has to go to him in due course. It was quite a simple exercise."*

14. When asked what he meant by the money going to the Appellant "*in due course",* the Appellant's father answered that his son would receive it at some point as this was his legal entitlement. The Appellant's father contended that were he to have tried to retain the amount he would have been guilty of the criminal offence of theft.

15. It was put to the Appellant's father that there was no documentary evidence to corroborate the occurrence of this earmarking exercise. The Appellant's father did not dispute that this was so but stated that it was nonetheless what happened.

The funds from the Appellant's aunts

16. The Appellant's father gave evidence that the 2017 payment also comprised small gifts made to the Appellant by his two deceased great-aunts from 1992 until their respective deaths in 2003 and 2010. The Appellant's father said that these gifts were made in the following fashion:-

"*Every year in January I would tell them what they were entitled to give, and they gave it to me in cash. Now, I didn't store the cash under the bed or in a safety deposit box, the cash was only a physical representation of the money.*

"[…] *I retained that money for* [the Appellant], *as his guardian* […] *in my accounts*."

17. What the Commissioner understands this to mean is that the Appellant's father, having received cash from the Appellant's great aunts, again 'earmarked' the same sum in his and his wife's bank account as belonging to the Appellant.

18. The Appellant's father stated that the total amount given by the two great aunts for this purpose over the relevant years was €42,000.

19. When asked by counsel for the Respondent about whether he had any documents recording the giving and receiving of this money, the Appellant's father stated that the relevant legislation did not require such documentation to be retained by the Appellant in order for the sums received to qualify for the relevant exemption.[3]

The assorted gifts comprising the 2018 lodgement

[3] Transcript page 30

20. Lastly, according to the Appellant's father the €19,245 lodged to the Appellant's account was derived from gifts given to him and his wife for the Appellant's benefit to mark events such as his birthdays, communion and confirmation and sporting achievements. The Appellant's father accepted that he could not quantify precisely how much these gifts came to but said that, given the era in which these events occurred, it "did violence to reason" to conclude that the Appellant did not receive at least €12,000 - €13,000 in gifts. This estimated sum was, at a certain point, put into savings certificates in the Appellant's name which, when cashed in 2018, returned the amount, including interest, of €19,245.78. The Appellant's father was unable to say when funds equalling cash alleged to have been received as small gifts from well-wishers and friends was put into savings certificates. The only document produced at hearing in this context, an An Post letter of 28 February 2018 attaching a repayment cheque in the aforementioned sum, gave no clue in this regard. He said, however, that it was at least five years prior to this date.

21. On or about 2020 the Appellant received a gift of the sum of €142,000 from his parents.

22. On or about 2021 the Appellant received a gift of the sum of €165,000 from his parents.

23. On or about 3 March 2022 the Appellant was assessed as having a liability of €65,835. €49,500 of this amount represented CAT on the value of the gift received in 2021 less €15,000 of the Group A tax free threshold yet to be allocated (resulting in the gift having a taxable value of €150,000). The balance was CAT arising from the payment of the Appellant's liability in respect of the 2021 payment by his father, which itself constituted a chargeable benefit.

Legislation and Guidelines

24. The Capital Acquisition Tax Consolidation Act 2003 ("the CATCA 2003") consolidated existing enactments relating to capital acquisition tax. Section 4 therein provides:-

> *"A capital acquisitions tax, to be called gift tax and to be computed in accordance with this Act shall, subject to this Act and any regulations made under the Act, be charged, levied and paid on the taxable value of every taxable gift taken by a donee."*

25. A "*donee"* is defined in section 2 of the CATCA 2003 as being a person who "*takes a gift".*

26. A *"disponer"* is defined in section 2 of the CATCA 2003 as being the person who gives a gift.

27. Section 5 of the CATCA 2003 concerns when a gift is deemed to be taken and provides:-

"For the purposes of this Act, a person is deemed to take a gift, where a person becomes beneficially entitled in possession, otherwise than on a death, to any benefit (whether or not the person becoming so entitled already has any interest in the property in which such person takes such benefit), otherwise than for full consideration in money or money's worth paid by such person."

28. A "*benefit"* is defined in section 2 of the CATCA 2003 as including "*any estate, income, interest or right".*

29. Schedule 2 of the CATCA 2003 contains provisions relating to the calculation of CAT. Among these is that gifts taken by a donee from defined groups of disponer will be free from CAT up to specific "*Group Threshold"* amounts. Group Threshold A applies to gifts taken by a donee from disponers who are their parents or children and makes gifts from such persons free from CAT where the aggregate value of the gifts taken does not exceed €335,000. Group Threshold B applies to gifts taken by a donee from disponers that are certain other types of relative and makes gifts taken from such persons free from CAT where the aggregate value of the gifts taken does not exceed €32,500. Group Threshold C applies to gifts taken by a donee from disponers not falling within Group A and Group B and makes gifts taken from such persons free from CAT where the aggregate value of the gifts received does not exceed €16,250. The aggregate value of gifts taken exceeding the relevant thresholds shall be taxed at 33%.

30. Section 69 of the CATCA 2003 is entitled "*Exemption of small gifts"* and provides:-

"(1) In this section, "*relevant period" means the period of 12 months ending on 31 December in each year.*

(2) The first €3,000 of the total taxable value of all taxable gifts taken by a donee from any one disponer in any relevant period is exempt from tax and is not taken into account in computing tax.

(3) In the case of a gift which becomes an inheritance by reason of its being taken under a disposition where the date of the disposition is within 2 years prior to the death of the disponer, the same relief is granted in respect of that inheritance under subsection (2) as if it were a gift."

31. Prior to the coming into force of the CATCA 2003, section 53 of the Capital Acquisitions Tax Act 1976 made provision for the exemption of small gifts. Initially the maximum exempted sum was £250, which was amended by way of section 44 of the Finance Act 1978 to £500 and then again by way of section 204 of the Finance Act 1999 to £1,000.

32. Section 45A of the CATCA 2003 is entitled *"Obligation to keep certain records".* Subsection (1) therein defines "*records"* as including:-

> "[…] *books, accounts, documents, and any other data maintained manually or by any electronic, photographic or other process, relating to—*
>
> […]
>
> *(d) a relief or an exemption claimed under any provision of this Act* […]"

33. Section 45A(2) of the same legislation then provides:-

> *"Every person who is an accountable person shall retain, or cause to be retained on his or her behalf, records of the type referred to in subsection (1) as are required to enable—*
>
> […]
>
> *(ii) a claim to a relief or an exemption under any provision of this Act to be substantiated."*

34. An "*accountable person"* is defined in section 2 of the CATCA 2003 as the "*donee or successor".*

Submissions

Appellant

35. The Appellant's father made submissions on his son's behalf. He submitted that the only evidence given in the appeal was his own and this was to the effect that the 2017 payment was, in its entirety, comprised of small gifts made over many years. The quantum of these gifts, he said, invariably fell under the "exemption of small gifts" prescribed by section 69 of the CATCA 2003 and, prior to that consolidating legislation, section 53 of the Capital Acquisitions Tax Acts 1976. These provisions exempted or exempt the first £250, £1,000 or €3,000 (depending on when the small gift was given) from CAT on all taxable gifts taken by a donee from any one disponer in a particular year. Moreover, €12,000 - €13,000 of the sum lodged by the Appellant to his bank account in 2018 was in similar fashion exempt from CAT under the exemption of small gifts because its source was gifts given by unidentified disponers to mark notable childhood events.

36. The Appellant's father submitted that upon his and his wife's mental 'earmarking' of a sum in their joint account equalling the maximum amount under legislation constituting a "small gift", the Appellant became "*beneficially entitled in possession* […] *to* [a] *benefit*"

and, thus, had "*taken a gift"* for the purposes of the CATCA 2003. Likewise, when cash was given to him by the Appellant's great aunts for the Appellant's benefit and he then earmarked a sum in the same joint account equal to the cash given, then also had the Appellant taken a gift within the meaning of the legislation. Thus, the Appellant's father emphasised, no gift was made upon the occurrence of the 2017 payment, nor was one made when €12,000 - €13,000 was put into Post Office savings certificates in the Appellant's name by him and his wife using funds drawn from their joint account.

37. The Appellant's father addressed the Respondent taking issue with the absence of documentary material evidencing the gifting of small sums. He pointed to his professional background as a lawyer based in Ireland and abroad and his honesty and transparency in dealing with his own tax affairs, which he said added to the credibility of his evidence.

38. The Appellant's father further submitted that there was no obligation under the CATCA 2003 that the Appellant have documentary evidence supportive of his having received small payments in the period 1992 – 2017. This was so because his son did not fall within the definition of an "accountable person".

39. The Appellant's father accepted in submission that there was some difficulty with regard to the precise calculation of the amount received in respect of birthdays, communions, confirmations and other similar events but said that the figure he arrived at was conservative and should be accepted by the Commissioner.

Respondent

40. Counsel for the Respondent submitted that the onus of proof in this appeal lay with the Appellant, citing the following words of Charleton J in *Menolly Homes v Revenue Commissioners* [2010] IEHC 49*:-*

> *"The burden of proof in this appeal process is, as in all taxation appeals, on the taxpayer. This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioners as to whether the taxpayer has shown that the relevant tax is not payable."*

41. The reason for the burden resting on an appellant was explained by Gilligan J in *TJ v Criminal Assets Bureau [2008] IEHC 168,* in a passage itself quoted by Charleton J in *Menolly Homes v Revenue Commissioners* [2010] IEHC 49*:-*

> *"The whole basis of the Irish taxation system is developed on the premise of self assessment. In this case, as in any case, the applicant is entitled to professional advice, which he has availed of, and he is the person who is best placed to prepare a*

computation required for self assessment on the basis of any income and/or gains that arose within the relevant tax period."

42. On the question of whether the Appellant had shifted the evidential burden, counsel for the Respondent submitted that there was no documentary evidence to substantiate the oral evidence of the Appellant's father that the money that he had received in 2017 and the amount lodged in 2018 comprised or were derived from sums paid to him in preceding years in small amounts by his parents, his two aunts and unidentified third parties.

43. Counsel for the Respondent said that it was a matter for the Commissioner as to what weight to ascribe to the evidence of the Appellant's father. She further submitted, however, that section 45A of the CATCA 2003 makes clear that claims should be capable of substantiation by reference to records. The Appellant or his father had kept no such records by which his claims regarding the taking of small gifts could be substantiated. It would, for example, have been possible for the Appellant's father to keep a contemporaneous note that he was setting aside or 'earmarking' funds for the benefit of his son. Most obviously, funds from all the above sources could not have been left "intermixed" in his and his wife's account, but could have been lodged to a different account opened in the Appellant's own name.

44. Counsel for the Respondent submitted that the Appellant's father's own evidence suggested that what occurred as regards 'earmarking' was, in fact, a retrospective exercise around the time of the lodgement of the Form 11 return in 2018, whereby he sought to calculate how much could be given to the Appellant without the charging of CAT.

Material Facts

45. The facts material to this appeal that were not in dispute were as follows:-

- on or about 2017 the Appellant received €170,000, which sum was transferred to an account in his name from the joint account of his parents;
- on or about 2018 the Appellant lodged €19,245 to his personal bank account, which sum was derived from cashed Post Office savings certificates;
- on or about 2020 the Appellant received a gift of the sum of €142,000 given to him by his parents;
- on or about 2021 the Appellant received a further gift from his parents of the sum of €165,000;

- the Appellant was assessed as having a liability to CAT arising from receipt of the 2021 gift of €49,500;
- the Appellant was assessed as having a further liability to CAT as a consequence of the Appellant's parents paying the aforementioned CAT liability;
- the total amount of CAT assessed by the Respondent as owed was €65,835.

Findings of Facts in Contest and Legal Analysis

46. This appeal turns on the determination of two factual questions. This first is whether the sum of €170,000 paid to the Appellant from the joint bank account of his parents in 2017 constituted a single gift from them or a series of small gifts given annually by his parents and two great aunts over time. The second is whether the sum of €19,245, lodged to the Appellant's account in 2018 was ultimately attributable partly to small gifts given by unidentified friends and well-wishers. If the answer to these questions is yes then the CAT charged on the 2021 gift of €165,000 for the Appellant's parents to the Appellant should be at a rate of nil, rather than at a rate of 33% giving rise to a liability of €49,500. The knock-on effect of this would also be that the additional CAT of €16,335 assessed on foot of the payment by the Appellant's parents of the €49,500, which itself constituted a gift, should be reduced to nil.

47. A core submission made by the father of the Appellant at hearing was that the only evidence relating to the background to the 2017 payment and 2018 lodgement was his own and that, as a consequence, the CAT liability assessed had to be reduced to nil. This legal submission was misconceived. As the Court held in *Menolly Homes v Revenue Commissioners [2010] IEHC 49,* in every tax appeal of an assessment such as that at issue, it is for the Appellant to prove to the Commissioner's satisfaction that, on the balance of probability, the sum assessed was incorrect. It is inevitable that in certain appeals it is only the taxpayer or, as in this instance, persons connected to them, who are in a position to provide evidence, whether oral or written, relevant to the matter at issue. It is of course also possible that, having heard or seen this evidence, the Commissioner may form the view that its probative value is insufficient to surpass the balance of probability evidential hurdle.

48. The Commissioner finds that this is the case in this appeal, with the effect that, for the reasons set out hereunder, it is found as a material fact that, firstly, the 2017 payment was a gift made by the Appellant's parents to the Appellant in that year and, secondly, that the lodgement of €19,245 was derived from a gift made to the Appellant by his parents at some earlier stage.

49. The evidence of the Appellant's father in relation to his and his wife's "earmarking" exercise was somewhat unclear. On the one hand, he said that, as a qualified solicitor, he was familiar from the birth of his son with the law concerning the taxation of small gifts and that on account of this he and his wife undertook the purely mental exercise of setting aside a portion of their money for the benefit of their son. This gifted money remained "intermixed" in their account and, to any outside observer, would have looked as if it was their own.

50. On the other, the father of the Appellant said that in 2017, when the Appellant was then [redacted] years of age, he sat down and carried out a pen and paper exercise to work out how much the Appellant was entitled to, based on the maximum sum falling within the small gift exemption legislation in force in each year. This latter account suggests a retrospective exercise which, to the Commissioner's mind, would be incompatible from the perspective of taxing the sum in question as if given in portions annually from 1992 with the requirement under section 69(2) of the CATCA 2003 that a gift must be "*taken by a donee from* [a] *disponer in any relevant period* [i.e. in a period of 12 months]*".*

51. Whether or not this is so, the Commissioner finds that the absence of any corroborating documentary evidence whatever is fatal to the Appellant's case. This applies equally to the parts of the 2017 payment and the 2018 lodgement purported to have been attributable to the small gifts from his parents, his great aunts and the unidentified third parties. The Appellant's father highlighted his expertise as a solicitor. As such, he must have been aware that the notional assignation of their own funds held in their own bank account to their son could only give rise to difficulty in the future. It would have been an obvious and straightforward course to establish a bank account in the Appellant's name and transfer funds gifted to the Appellant to that place. No cogent explanation was given as to why this was not done. Falling short of this, he and his wife could still have made some contemporaneous record of their gifting of money. No such material was produced at hearing.

52. Observations of much the same nature must be made in relation to the cash funds supposedly given to the Appellant's father by the great aunts for the benefit of the Appellant. In the absence of money being lodged to a bank account in the Appellant's name, no record was kept of the arrangement whereby each year the great aunts would give the Appellant's father the precise maximum amount falling within the small gift exemption in cash, following which he would earmark existing funds in the same amount in his and his wife's joint account as being held for the benefit of their son.

53. As regards sum of €12,000 - €13,000 purportedly gifted by unidentified third parties to mark events like communions, confirmations birthdays and sporting achievements, the Commissioner observes that the Appellant's father himself accepted that this was an estimate and that he had no proof to support it. This admission is itself fatal to the Appellant discharging the burden of proof in the context of this ground advanced in the appeal. The Commissioner is in no position to speculate, as the Appellant's father did in evidence, as to what a child in the Appellant's circumstances might have expected to receive from well-wishers throughout the period of his childhood. There is no basis on which a finding could be made in the Appellant's favour in this context. Moreover, all of the questions raised in relation to the non-recording and, to use the Appellant's phrase, the "intermixing" of funds in the account of the Appellant's father and mother apply with equal force in respect of gifts supposedly made at unknown times by unknown persons.

54. The Commissioner is conscious of the fact that some of the €19,245 would presumably be interest that would be free from CAT. However, at hearing no evidence was produced as to when the Savings Certificate account was started and it is thus impossible to even form an estimate of what it might amount to. Again, this failing on the part of the Appellant means that the burden resting with him is not shifted. The net effect is that the assessment appealed must stand affirmed.

Determination

55. Based on the application of the law to the facts as found, the Commissioner determines that the assessment under appeal, whereby the Appellant was assessed as having a balance payable for the period 1 September 2021 – 31 August 2022 of €65,835, must stand affirmed. The Commissioner appreciates the Appellant will no doubt be disappointed by this determination but is of the view that he was correct to check his legal rights.

56. This Appeal is determined in accordance with Part 40A of the TCA 1997 and in particular section 949AK thereof. This determination contains full findings of fact and reasons for the determination, as required under section 949AJ(6) of the TCA 1997.

Notification

57. This determination complies with the notification requirements set out in section 949AJ of the TCA 1997, in particular section 949AJ(5) and section 949AJ(6) of the TCA 1997. For the avoidance of doubt, the parties are hereby notified of the determination under section 949AJ of the TCA 1997 and in particular the matters as required in section 949AJ(6) of the TCA 1997. This notification under section 949AJ of the TCA 1997 is being sent via

digital email communication **only** (unless the Appellant opted for postal communication and communicated that option to the Commission). The parties will not receive any other notification of this determination by any other methods of communication.

Appeal

58. Any party dissatisfied with the determination has a right of appeal on a point or points of law only within 42 days after the date of the notification of this determination in accordance with the provisions set out in section 949AP of the TCA 1997. The Commission has no discretion to accept any request to appeal the determination outside the statutory time limit.

Conor O'Higgins
Appeal Commissioner
24th October 2023

The Tax Appeals Commission has been requested to state and sign a case for the opinion of the High Court in respect of this determination, pursuant to the provisions of Chapter 6 of Part 40A of the Taxes Consolidation Act 1997.